SUPREME COURT, U. S.

AUG 12 1970

ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER ON BEHALF OF THE STATE OF OREGON

LEE JOHNSON
Attorney General of Oregon

PETER S. HERMAN
Senior Counsel

JACOB TANZER
Solicitor General
Attorneys for Defendant, State of Oregon

INDEX

	Page
Answer	1
Proof of Service	6

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Defendants.

ANSWER

COMES NOW defendant State of Oregon, and answering Plaintiff's complaint, admits, denies and alleges as follows:

I.

Answers I thereof as follows:

1. Admits subparagraph 1, 2, 3 and 4.

2. Answering subparagraph 5, alleges that the State of Oregon has an interest in the matter in controversy herein.

3. Answering subparagraph 6, alleges that Western Union does business within the State of Oregon and is authorized by law to do so.

II.

Answers II thereof as follows:

1. Admits all allegations thereof.

III.

Answers III as follows:

1. Admits that in many instances where money orders have been cancelled, Western Union has been unable to make refund to the senders; that in many instances drafts have been issued to sendees but have not been presented for payment. This defendant has insufficient information to either admit or deny the specific percentages alleged, but asserts that such specific percentages are not essential to the determination of the issues of this suit.

IV.

Answers IV thereof as follows:

1. Admits subparagraphs 17, 22, 23, 24, 26, 27, 28, 29, 30, 33 and 35.

2. Answering subparagraphs 18, 19 and 20, admits as follows:

(a) Western Union is holding funds representing unpaid and unrefunded money orders purchased on or before December 31, 1962.

(b) A portion of the funds so held by Western Union is on account of money orders purchased in the State of Pennsylvania.

(c) Funds so held by Western Union have been unclaimed for a period in excess of 7 years.

3. Answering subparagraph 21, admits that under the laws of Pennsylvania, such sum may be subject to escheat to that state, but affirmatively alleges that if any portion of said sum represents money orders for which drafts have been issued to sendees within the State of Oregon but which have not been presented for payment,

the sums represented thereby are subject to escheat to the State of Oregon under Oregon law as abandoned property.

4. Answering subparagraph 25, this defendant alleges:

(a) Where a draft has been issued to a sendee in Oregon, but is not presented for payment for a period exceeding 7 years, the fund is presumed to be abandoned and Oregon claims the same.

(b) Where money is wired from another state, and Oregon is the state of destination, if a draft is not issued and the money order is cancelled because of inability to locate the sendee, Oregon makes no claim to the funds, even though refund is not made to the sender for in excess of 7 years.

(c) If a money order is purchased in the State of Oregon for destination to another state, but a draft is not issued and the money order is cancelled due to inability to locate the sendee, Oregon claims the sum represented thereby if the sender cannot be located and refund made within seven years.

(d) If a money order is purchased in the State of Oregon for destination to another state, and a draft is issued to the sendee but not presented for payment for 7 years, Oregon makes no claim to the sum represented thereby.

(e) Where a money order is purchased within the state and the sendee is also in the state, if the sum represented thereby is unpaid or unrefunded for a period in excess of 7 years, Oregon makes claim thereto.

The statutory provision of Oregon law under which

Oregon makes claim under (a) (c) and (e) above, is ORS 98.342 which provides as follows:

> "All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned."

By virtue of the provisions of ORS 98.342, Oregon claims that funds represented by (a) (c) and (e) above are owing within the State of Oregon.

5. Answering subparagraph 31, admits the same except asserts that it has insufficient information to admit or deny the amounts alleged.

6. Answering subparagraph 34, admits the allegations thereof, and alleges that the State of Oregon is subject to irreparable injury and loss of property unless the issues of this suit are determined by this Court.

WHEREFORE, having answered the complaint, defendant State of Oregon prays that judgment be entered directing Western Union to distribute to the State of Oregon all funds held by Western Union under the following circumstances:

1. All sums represented by drafts which have been issued to a sendee in Oregon but which have not been presented for payment for in excess of seven years.

2. All sums represented by money orders purchased in Oregon for destination to another state, but which have been cancelled because of inability to locate the

sendee, and the sender has not been located and refund made for in excess of seven years.

3. All sums unclaimed and unrefunded for a period in excess of seven years where the money order has been purchased within Oregon for a sendee also in Oregon.

For such other relief as the Court may deem just.

LEE JOHNSON
Attorney General of Oregon

JACOB TANZER
Solicitor General
Attorney for the State of Oregon

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Defendants.

PROOF OF SERVICE

I, JACOB TANZER, Solicitor General of the State of Oregon, hereby certify that I am one of the attorneys for the defendant, State of Oregon, that I am a member of the Bar of the Supreme Court of the United States, and that on the day of , 1970, I served copies of the foregoing Answer, on each of the following parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of New York
   (a) Hon. Nelson A. Rockefeller
   Governor of the State of New York
   Albany, N. Y.
   (b) Louis J. Lefkowitz
   Attorney General of the State of New York

Proof of Service

2. State of Florida

   (a) Hon. Claude R. Kirk, Jr.
   Governor of the State of Florida
   Tallahassee, Fla.

   (b) Hon. Earl Faircloth
   Attorney General of the State of Florida
   Tallahassee, Fla.

3. Commonwealth of Virginia

   (a) Hon. Mills E. Goodwin, Jr.
   Governor of the Commonwealth of Virginia
   Richmond, Va.

   (b) Hon. Robert Y. Button
   Attorney General of the Commonwealth
   of Virginia
   Richmond, Va.

4. The Western Union Telegraph Company

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   Vice-President and General Counsel
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   (b) Peter F. Oates, Esq.
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JACOB TANZER
Solicitor General
State of Oregon